

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1995)

MD Docket No. 95-3

**REPLY COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.**

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MFS Communications Company, Inc. ("MFS"), by its undersigned counsel, hereby submits its Reply Comments in the above-captioned proceeding. The Commission's *Notice of Proposed Rulemaking* seeks to modify the regulatory fees imposed upon competitive access providers ("CAPs") and other common carrier telecommunication service providers. Specifically, the Commission seeks comment on two proposed methods for calculating regulatory fees. The initial comments of MFS maintained that both of the Commission's alternatives would result in a massive increase in the regulatory fees imposed on CAPs and thereby reduce their ability to compete with incumbents for the provision of service. Furthermore, MFS questioned the speculative nature of the Commission's regulatory fee methodology and concluded that both of the Commission's proposed fee mechanisms would be difficult to implement and require additional burdensome reporting requirements. Accordingly, MFS strongly supported the a revenue based fee model as a fair, simple, and equitable alternative to the Commission's proposed fee calculation methodologies.

Many commenters support a revenue based fee model. Comments of Teleport Communication's Group, Inc. ("TCG"); Comments of the National Exchange Carrier Association, Inc. ("NECA"); Comments of AT&T; Comments of Cablevision Lightpath ("Lightpath");

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Comments of US West; Comments South Western Bell Corporation ("SWB"). These commenters find both of the Commission's proposed alternatives to be an impediment to competition, speculative, inequitable, and impractical or burdensome to administer. See Comments of Cablevision Lightpath, Inc. ("Cablevision") at 1-2; Comments of TCG at 4; Comments of the National Exchange Carrier Association ("NECA") at 4.

In general, competitive carriers expressed concern regarding the tremendous increase in the regulatory fees under either of the Commission's proposals. For example, Cablevision indicates that its regulatory fees would increase over 200%. Comments of Cablevision at 3. ALTS states that regulatory fees for some of its competitive local exchange and access provider members could increase by 440,000%. Comments of ALTS at 4. Furthermore, TCG and Cablevision both point out how either of the Commission's proposed alternatives, when applied, would "tax" CAPs to a greater extent than other telecommunications providers. Comments of TCG at 2-4. TCG notes, for example, a CAP "minute" or "line" represents a much smaller revenue opportunity than a LEC minute or line because a LEC has a greater opportunity to bundle a number of additional services and thereby generate much more revenue for each line or minute of usage provided. Comments of TCG at 2-3. Furthermore, Cablevision aptly notes that the Commission's decision to employ voice-grade circuits to determine the number of customer units unduly shifts the rate paying burden to CAPs and other data service providers. Comments of Cablevision at 4.

MFS joins commenting parties in suggesting that the Commission reconsider its proposed rate assessment methodology in light of the undue burden it would impose upon CAPs. MFS joins Cablevision, TCG, and others in suggesting that the imposition of the current proposals

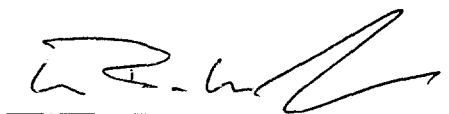
could threaten CAPs' critical competitive position in the marketplace. MFS concurs with TCG's position that the imposition of a disproportionate fee burden upon CAPs is particularly unfair "given that CAPs operate in a regulatory environment where barriers to entry remain high in most states, where CAPs have attracted only a small percentage of the revenues associated with interstate communication services, and where CAPs do not have all the same revenue streams available to support their investments that local exchange carriers do." Comments of TCG at 5. The disparity in regulatory fees proposed for CAPs, as compared to the proposed fees for LECs are particularly troublesome considering that CAPs not only supplement existing LEC facilities but provide otherwise captive ratepayers a choice of providers and the inherent benefits that derive therefrom. *Id.*

Furthermore, MFS concurs with the general assessment of commenters that either method of fee assessment proposed by the Commission would be speculative and be too burdensome and impractical to administer. *See, e.g.* Comments of Cablevision at 1-2; Comments of NECA at 4; Comments of TCG at 4. MFS finds that the minutes of use ("MOU") and per-line fee assessment proposals are flawed, based on questionable assumptions and not supported by record evidence. *See* Comments of AT&T at 7; Comments of SWB at 6; Comments of NECA at 3. For example, NECA notes that MOU data has wide monthly variations, limited verifiability and may not reflect current customer composition. Comments of NECA at 3. Similarly, because of the flux in usage patterns, the extrapolation of customer unit data on the basis of historical data would also be unreasonable speculative. Comments of MFS at 4-5. In order to remedy the speculative nature of these fee mechanisms, the Commission would need to impose yet another burdensome reporting requirement. NECA, which has considerable experience with Fund administration

notes, for example, that the imposition of a line based fee mechanism will "add complex administrative procedures and methodologies" to determine the necessary line information. Comments of NECA at 2. In addition, NECA notes that the Commission's MOU based fee proposal is "administratively burdensome" and "does not promote efficiency." Comments of NECA at 3.

Accordingly, as the record demonstrates that the Commission's proposed alternatives would impose disproportionate and onerous costs and reporting requirements upon CAPs, MFS respectfully requests that the Commission adopt a revenue based fee structure. A revenue based fee is simple, straightforward, and would avoid the inequities inherent in the application of either the per-line or MOU alternatives.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "A. D. Lipman", written over a horizontal line.

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February 28, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 1995, copies of the foregoing
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